

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
vs.
GEORGE DJURA JAKUBEC,
Defendant.

CASE NO. 10cr4828-LAB

**ORDER GRANTING IN PART AND
DENYING IN PART MOTION FOR
REDUCTION OF SENTENCE
[Dkt. 62]**

In 2011, George Djura Jakubec pled guilty to two counts of brandishing a firearm in furtherance of a crime of violence in violation of 18 U.S.C. § 924(c)(1)(A)(ii). Under the version of the statute in effect in 2011, Jakubec faced a mandatory minimum sentence of thirty years, which the Court imposed: consecutive sentences of five years for the first offense and twenty-five for the second. Jakubec, who was 55 years old at the time of sentencing, is projected for release in June of 2036, when he will be 80 years old.

Congress has since amended § 924(c). Under the current version of the statute, the first and subsequent offenses now carry identical minimum 60-month terms. Based on this statutory change, Jakubec moves for a reduction of his sentence under 18 U.S.C. § 3582(c)(1). He asks the Court to order his

1 release as he has served more than the 120-month minimum prescribed for
2 the two offenses. The Court concludes that it has discretion under § 3582 to
3 modify Jakubec's sentence, but also determines that ten years is too short a
4 sentence for his offenses. The Motion is **GRANTED IN PART**, with the Court
5 reducing Jakubec's sentence to 240 months.

6 Under 18 U.S.C. § 3582(c)(1)(A), a court may modify a defendant's term
7 of imprisonment if, after considering the factors set forth in 18 U.S.C. § 3553(a),
8 it concludes that "extraordinary and compelling reasons" warrant a reduction.
9 Any reduction must also be "consistent with applicable policy statements
10 issued by the Sentencing Commission." *Id.* The Sentencing Commission has
11 issued a policy statement interpreting what a court may deem "extraordinary
12 and compelling reasons" when considering a "motion of the Director of the
13 Bureau of Prisons under [§ 3582(c)(1)(A)]." U.S.S.G. § 1B1.13(1)(A). This
14 statement limits the available reasons to three specified categories and a
15 catchall covering any other reason "[a]s determined by the Director of the
16 Bureau of Prisons." U.S.S.G. § 1B1.13 at cmt. n.1. The Government argues
17 that this policy statement is applicable, so the Court can't reduce Jakubec's
18 sentence pursuant to the catchall provision because the motion is not brought
19 by the Director of the Bureau of Prisons.

20 But for the very same reason, Jakubec's motion doesn't fall within the
21 policy statement's stated scope. As the Ninth Circuit held after the Government
22 filed its brief, "the Sentencing Commission ha[d] not yet [as of the April 8, 2021]
23 issued a policy statement 'applicable' to §3582(c)(1)(A) motions filed by a
24 defendant." *United States v. Aruda*, 993 F.3d 797, 802 (9th Cir. 2021). And
25 although at least eight other circuit courts of appeals have reached a similar
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1 conclusion,¹ the Sentencing Guidelines released in August 2021 neither
 2 update § 1B1.13 to apply to a defendant's § 3582 motion nor include a new
 3 policy statement applicable to such motions. See U.S.S.G. § 1B1.13 (Aug. 1,
 4 2021); *see also, generally*, United States Sentencing Commission, *Guidelines*
 5 *Manual 2021* (Aug. 1, 2021). Absent an applicable policy statement, the Court
 6 has discretion to determine what constitutes an extraordinary and compelling
 7 reason to grant a defendant's motion for a reduction of his sentence. *Aruda*,
 8 993 F.3d at 802.

9 In exercising discretion here, the Court is persuaded that the reduction
 10 in the statutory minimum sentence constitutes an extraordinary and compelling
 11 reason that supports lowering Jakubec's sentence. As the Fourth Circuit
 12 determined—and as at least two courts in this District have concluded—the
 13 change reflects Congress' view that § 924(c)'s earlier form resulted in
 14 sentences that were “dramatically longer than necessary or fair.” *United States*
 15 *v. McCoy*, 981 F.3d 271, 285–86 (4th Cir. 2020); *see also United States v. Ngo*,
 16 Case No. 97-cr-3397-GPC, 2021 WL 778660 at *4 (S.D. Cal. Mar. 1, 2021);
 17 *United States v. Lott*, Case No. 95-cr-72, 2020 WL 3058093 at *3 (S.D. Cal.
 18 June 8, 2020).

19 The conclusion that the change in § 924(c) is an extraordinary and
 20 compelling reason to modify a sentence doesn't end the inquiry, though. Any
 21 reduction the Court grants must be reasonable and warranted considering the
 22 factors set forth in 18 U.S.C. § 3553(a). See 18 U.S.C. § 3582(c)(1). Applying

23 ¹ Circuits in agreement with *Aruda's* conclusion include, at least, the Second,
 24 Third, Fourth, Fifth, Sixth, Seventh, Tenth, and D.C. Circuits. *United States v.*
 25 *Brooker*, 976 F.3d 228 (2d Cir. 2020); *United States v. Andrews*, 12 F.4th 255
 26 (3d Cir. 2021); *United States v. McCoy*, 981 F.3d 271 (4th Cir. 2020); *United*
 27 *States v. Cooper*, 996 F.3d 283 (5th Cir. 2021); *United States v. Jones*, 980
 28 F.3d 1098 (6th Cir. 2020); *United States v. Gunn*, 980 F.3d 1178 (7th Cir.
 2020); *United States v. McGee*, 992 F.3d 1035 (10th Cir. 2021); *United States*
v. Long, 997 F.3d 342 (D.C. Cir. 2021).

1 those factors, the Court finds that some reduction is warranted, but not to the
2 level Jakubec advocates.

3 To begin with, Jakubec's offenses and his surrounding criminal conduct
4 were unquestionably serious. Jakubec first came to law enforcement's
5 attention after a gardener was injured when an accidental explosion occurred
6 under his feet while he was walking in Jakubec's backyard. The explosion was
7 triggered by the residue of volatile chemicals Jakubec had earlier disposed of
8 in the yard. This discovery led law enforcement to obtain a warrant to search
9 Jakubec's home. Inside, officers found large quantities of highly volatile
10 explosives and precursor chemicals. Documentary evidence found in the
11 house also connected Jakubec with four recent bank robberies. Victims in two
12 of the robberies reported that Jakubec was armed with a firearm, and he later
13 admitted to using a firearm during the other two robberies. Reducing Jakubec's
14 sentence to just ten years for these many serious offenses wouldn't provide
15 just punishment, further deterrence, or adequately promote respect for the law.

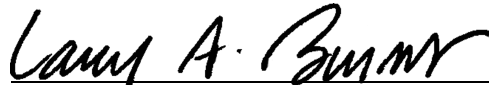
16 Nevertheless, maintaining the original thirty-year sentence in the
17 absence of a statutory minimum requiring it is, as the Court observed at the
18 time of sentencing, disproportionate. (See 6/13/2011 H'ring Tr., Dkt. 48 at
19 21:10–14). Jakubec is now 66 years old and he has served more than a
20 decade in federal prison. Before losing his job in 2007, he had led a legally
21 blameless life. After that, the attendant economic hardships he experienced
22 apparently drove him to crime. Since his sentencing, Jakubec has maintained
23 a mostly discipline-free prison record, with only one minor infraction reported.
24 (Dkt. 62-2, Ex. G at 85). He has served as a GED tutor to other prisoners and
25 has completed 48 hours of pre-release education and planning courses
26 (including independent study). Serious as Jakubec's crimes were, they don't
27 justify a sentence that will likely keep him in prison for the rest of his life.

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1 Because Jakubec has presented extraordinary and compelling reasons
2 supporting his requested reduction of his sentence, the Court **GRANTS** his
3 Motion **IN PART**. Mindful of the continuing requirements for the sentence to
4 be reasonable, to represent just punishment, to support specific and general
5 deterrence, and to promote respect for the law, the Court reduces the custodial
6 portion of Jakubec's sentence to 240 months. His previously ordered
7 supervised release term of five years remains unchanged, as do the specific
8 conditions of supervised release the Court originally imposed.

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10 **IT IS SO ORDERED.**

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12 Dated: December 23, 2021

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14 **HON. LARRY ALAN BURNS**
15 United States District Judge
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